



# Sales Tax Information for Restaurants



### Utah State Tax Commission

210 North 1950 West  
Salt Lake City, Utah 84134  
(801) 297-2200  
1-800-662-4335  
[www.tax.utah.gov](http://www.tax.utah.gov)

*If you need an accommodation under the Americans with Disabilities Act, contact the Tax Commission at (801) 297-3811, or TDD (801) 297-2020. Please allow three working days for a response.*

## Contents

Sales and Use Tax General Information .....	2	Determining Tax Base .....	7
Introduction .....	2	Taxable Sales .....	7
Utah Tax Code .....	2	Determining Tax Rate (Sourcing) .....	7
What is Sales and Use Tax? .....	2	Tax Rate Changes .....	7
Streamlined Sales Tax .....	2	Sales and Use Tax Exemptions .....	8
Filing and Reporting Requirements .....	2	Entity-based Exemptions .....	8
Sales Tax License .....	2	Use-based Exemptions .....	9
How To Close a Sales Tax Account .....	2	Product-based Exemptions .....	9
How To Close an Outlet .....	2	Additional Information .....	10
Notification of Liability .....	2	Goods Consumed by the Seller .....	10
Filing Requirements .....	2	Coupons and Rebates .....	10
Returns .....	2	Premiums and Gifts .....	10
Nexus Filers .....	3	Returned Merchandise .....	10
Electronic Funds Transfer (EFT) .....	3	Returned Checks and Bad Debts .....	10
Seller Discount .....	3	Special Events .....	11
Penalties .....	3	Vending Machine Sales .....	11
Interest .....	3	Returnable Containers .....	11
Refund .....	3	Food Stamps and WIC .....	11
Record Keeping Requirements .....	3	Videos and DVDs .....	11
Sales-based Tax Types .....	4	Newspapers and Postage .....	11
Combined Sales Tax Rate .....	4	Money Orders, Faxes and Photocopies .....	11
State Sales and Use Tax .....	4	Cigarettes and Tobacco Products .....	11
Local Option Sales and Use Tax .....	4	Trade-in on Manufactured Homes .....	11
County Option Sales and Use Tax .....	4	Starting a New Business .....	12
Resort Communities Tax .....	4	Forms .....	12
Rural Health Care Facilities Tax .....	4	Sales Tax Publications .....	12
Public Transit Tax .....	4	Internet Information .....	12
Highways Tax .....	4	Specific Information for Restaurants .....	13
Recreational Facilities and Botanical, Cultural, and Zoological Organizations Tax .....	4	Definition of a Restaurant .....	13
Town Option Sales and Use Tax .....	4	Application of Restaurant Tax .....	13
Related Taxes and Fees .....	4	Restaurant Operations .....	13
Tourism Tax .....	5	Tips and Gratuities .....	14
Motor Vehicle Rental Tax .....	5	Cover Charges .....	14
Transient Room Tax .....	5	Admission Charges .....	14
Municipality Transient Room Taxes .....	5	Exceptions .....	14
Convention Facilities Tax .....	5	Alcoholic Beverages .....	14
Waste Tire Recycling Fee .....	5	Liquor, Mixed Drinks, Set-ups and Wine .....	14
Other Information .....	6	Additional Reference Material .....	15
Calculating Sales Tax .....	6		
Definitions .....	6		
Taxes or Fees Imposed on the Seller .....	7		

# Sales and Use Tax General Information

## Introduction

This publication is a general guide. It provides basic information, but is not all-inclusive. Future changes to the laws or rules will supercede information in this document.

## Utah Tax Code

Utah Tax Code is officially published by Matthew Bender & Co., Inc. under the trademark LexisNexis. This publication includes Utah tax law and administrative rules written by the Utah State Tax Commission. The online site requires a subscription fee to access its services. Individuals or businesses may contact the publisher directly to order a hardcopy at:

Matthew Bender & Co., Inc.  
Attn: Customer Support  
1275 Broadway  
Albany, NY 12204-2694  
1-800-562-1197

Utah Code, Title 59, Revenue and Taxation, is available free of charge at the Utah Legislature's homepage (see [www.le.state.ut.us/~code/title59/title59.htm](http://www.le.state.ut.us/~code/title59/title59.htm)). The state makes every effort to maintain current information; however, published code found at LexisNexis may be more current than the information found at this site.

## What is Sales and Use Tax?

### Sales Tax

Sales tax is a tax on the retail sale or lease of all tangible personal property and on certain services. Sales tax is collected by a Utah licensed retailer or seller, and is paid to the Tax Commission on monthly, quarterly or annual tax returns. For more specific information, refer to Utah Code §59-12-103 and Administrative Rules R865-12L, R865-19S, and R865-21U.

### Use Tax

Use tax is a tax on amounts paid or charged for purchases of tangible personal property and for certain services where sales tax was due but not charged. The purchaser remits use tax directly to the Tax Commission. Examples of activities that trigger use tax liabilities include withdrawal of items from resale inventories and other consumption of goods or services purchased tax-free.

Use tax must be accrued and paid on certain purchases from unregistered out-of-Utah sellers. Some of the more common items for use tax reporting include advertising supplies, office or shop equipment, computer hardware and software, and office supplies.

Sales and use taxes are transaction taxes. This means the tax is not on the articles sold or furnished, but on the transaction, and the purchaser is the actual taxpayer. The seller is charged with collecting the tax from the purchaser and paying the tax to Utah.

In cases where the seller does not charge the tax, it becomes use tax and the purchaser is responsible to report and remit the tax.

## Streamlined Sales Tax

Streamlined Sales Tax (SST) is a nationwide effort by state governments, local governments and the private sector to simplify and modernize sales and use tax collection and administration. This multi-state effort produced the Streamlined

Sales and Use Tax Agreement. The purpose of the Agreement is to establish uniform sales and use tax standards, modernize sales and use tax laws, and make the burden of compliance the same for all sellers and all types of commerce. Effective July 1, 2006, Utah will adopt the point of delivery requirements of the Streamlined Sales and Use Tax Agreement. For more information on the SST Project visit [www.streamlinedsalestax.org/](http://www.streamlinedsalestax.org/).

## Filing and Reporting Requirements

### Sales Tax License

All retailers must have a Utah Sales Tax License and related account number. Application for a license and account number is made to the Tax Commission on a Utah State Business and Tax Registration form, TC-69. However, most sellers may apply online using OneStop Business Registration, found at [business.utah.gov/registration](http://business.utah.gov/registration).

Examples of businesses that typically must register for a sales tax license include: retailers selling tangible goods or services, wholesalers purchasing resale inventory, manufacturers, leasing companies, and consumers such as professional firms and construction contractors.

Sales tax licenses are not transferable.

### How To Close a Sales Tax Account

Every sales tax license holder that discontinues business in Utah is required to notify the Tax Commission immediately in writing. Businesses may contact the Taxpayer Services Division of the Tax Commission for assistance in closing sales tax accounts. If the Tax Commission is not informed that the business has closed, the license holder may be assessed an estimated tax, including late penalties and interest.

### How To Close an Outlet

If the account remains open, but an outlet location in Utah is closed, the sales tax license holder is required to notify the Tax Commission immediately in writing, identifying the effective date of the closure. Businesses may contact the Taxpayer Services Division of the Tax Commission for help in closing sales tax outlets. The closed outlet will no longer appear on the sales tax return generated and mailed to the account holder.

### Notification of Liability

If you are purchasing a business, Utah Code §59-12-112 requires you to withhold enough of the purchase money to cover any taxes due and unpaid until the former owner of the business produces a receipt from the Tax Commission showing that all taxes have been paid, or a certificate showing no taxes are due. If you fail to withhold the required purchase money and the taxes remain due and unpaid 30 days after the business is sold, you will be personally liable for payment of the unpaid sales taxes of the former owner.

## Filing Requirements

### Returns

Only one sales and use tax return is required for each filing period. Each return may include schedules that allow for multiple outlet sales and goods consumed to be reported on the return. If a seller is liable for sales-related taxes, such as

transient room, tourism, waste tire, etc.), a separate return must be filed for each period for each separate type of tax or fee. Returns are due on or before the last day of the month following each filing period, unless the due date falls on a weekend or holiday. In that case, the return will be due the first working day following the end of the month.

The Tax Commission determines the filing frequency for sales and use tax returns. If your sales tax liability is less than \$1,000 per year, you may file annually. If your sales tax liability is \$1,000 or more but less than \$50,000 per year, you may file quarterly. If your sales tax liability is \$50,000 or more, you must file monthly.

### Paper Returns

Once a license has been issued or a new tax imposed, the Tax Commission will mail a personalized return to each seller (unless the seller has requested no paper returns be mailed to them by the Tax Commission). However, if a seller does not receive a return, it is the seller's responsibility to obtain blank forms, file all appropriate returns, and pay the taxes by the due date. Returns must be filed even if the account holder has no tax liability for a particular filing period.

### Online Sales Tax Return

Sellers have the option of filing their sales and use tax returns and schedules online using the TC-61 web application found at [utah.gov/salestax](http://utah.gov/salestax). The Tax Commission will assign a PIN and print it on the TC-61 return that will allow access to the online application.

### Nexus Filers

Nexus means a business entity has established a direct or representational presence within a particular state. This presence gives the state the right to require a seller to pay or collect and remit certain taxes. Businesses with Utah nexus must file sales tax returns even if they have no tax liability for a particular period.

### Electronic Funds Transfer (EFT)

If your annual sales tax liability is \$96,000 or more, payment must be made by Electronic Funds Transfer (EFT). EFT payments can be completed up to 30 days before the tax filing due date and withdrawn on the payment date you select. If you wait until the tax filing due date to make a payment, the payment must be completed by 7:00 p.m. Mountain Time, with a settlement date no later than the next business day. This account must be set up prior to making your payment. Contact the Tax Commission for information.

**Caution:** Filers who are required to pay by Electronic Funds Transfer (EFT) should not use the Tax Commission's web-based payment system (PaymentExpress) for current returns. Payments made online by credit card or electronic check do not meet EFT filing requirements. Sellers required to pay by EFT that use the online payment system for current returns will lose their seller discount. However, EFT filers may pay past-due liabilities online using PaymentExpress.

### Seller Discount

Persons filing monthly sales tax returns are entitled to a seller discount equal to 1.31 percent of the combined sales tax. Persons filing monthly tourism tax returns are entitled to a seller discount equal to 1 percent of the tourism short-term leasing tax adopted by the county. Quarterly and annual filers are not eligible for the seller discount.

### Penalties

The penalty for failure to file a tax due return by the due date is the greater of \$20 or 10 percent of the unpaid tax. In addition, if a tax balance remains unpaid 90 days after the due date, a second penalty, the greater of \$20 or 10 percent of the tax balance, will be added for failure to pay timely. The penalty for failure to pay tax due as reported on a timely filed return, or within 30 days of a notice of deficiency, is the greater of \$20 or 10 percent of the tax due. In addition, monthly returns filed late or underpaid returns will result in the loss of seller discount. For more information, see Publication 58, *Utah Interest and Penalties* at [tax.utah.gov/forms/](http://tax.utah.gov/forms/).

Purchasers or lessees who claim sales and use tax exemptions for purchases or leases of manufacturing machinery and equipment, normal operating replacements or semiconductor fabricating or processing materials are required to report the amount of such purchases or leases on the appropriate informational line of their periodic sales and use tax returns. Failure to comply with these reporting requirements may subject the responsible party to a penalty of the lesser of \$1,000 or 10 percent of the sales tax that would have been imposed if the exemption had not applied.

### Interest

Interest will be assessed at the rate prescribed by law from the original due date until paid in full. For information, taxpayers may refer to Publication 58, *Utah Interest and Penalties* at [tax.utah.gov/forms/](http://tax.utah.gov/forms/), or call the Utah State Tax Commission.

### Refund

A taxpayer can file a claim for a credit or a refund of an overpayment within three years of paying the tax, even though the taxpayer did not object to a notice of deficiency or a notice of assessment by the Tax Commission. If the Tax Commission denies this claim for credit or refund, the taxpayer may file a petition for agency action. A taxpayer may not, however, file a claim for a credit or a refund on a tax deficiency that has been previously adjudicated.

Each transaction for which a sales tax refund is requested must include: (1) requestor's name; (2) requestor's account number or federal ID number; (3) seller name; (4) seller account number; (5) seller location; (6) date of sale/purchase; (7) description of item(s) sold/purchased; (8) taxable amount; (9) tax paid; (10) basis for exemption from sales and use tax; (11) sales tax rate(s) and dates of remittance to Utah State Tax Commission; (12) copy of invoice(s) that show tax collected; and (13) copy of check(s) that verify payment of the invoice.

## Record Keeping Requirements

### From Tax Commission Rule R865-19S-22

Every retailer, lessor, or person doing business in Utah is required to keep complete records used to determine the amount of sales and use tax for which they are liable. Records must be retained for three years from the filing date of the tax returns. All records shall be open to the Tax Commission or its authorized agents for examination at any time.

These records shall:

- Show gross receipts from sales or rental payments from leases of tangible personal property, or services performed in connection with tangible personal property made in Utah regardless of whether the retailer considers the receipts to be taxable or non-taxable.
- Show deductions and exemptions allowed by law and claimed in filing sales tax returns.

- Show bills, invoices, or similar evidence of all tangible personal property purchased for sale, consumption, or lease in Utah.
- Include the normal account books maintained by an ordinarily prudent business person, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in the preparation of tax returns must also be maintained.

**Note:** Any automated data processing (ADP) tax accounting system must be capable of reproducing visible and legible records for tax liability verification. General ledgers with source references should coincide with financial reports for each tax period. All supporting documentation should be easily accessible. Additional record keeping requirements can be found in Tax Commission Rule R861-1A-35.

## Reminders

This information is only a summary and does not contain all sales or use tax laws and rules.

1. Sales tax must be collected on all taxable sales of tangible personal property to the final consumer.
2. You must file a sales and use tax return for every period, whether or not tax is due for a particular filing period.
3. If you change business locations, or add or close any outlets, you must notify the Tax Commission in writing.
4. If you discontinue business, you must notify the Tax Commission in writing within thirty days of the final date you were required to collect sales tax.
5. You must retain your records for three years.
6. Records are subject to audit by a Tax Commission representative.
7. Sales tax licenses are not transferable.
8. Merchandise purchased tax free but used or consumed by you or your company must be reported on the line provided on the sales and use tax return. You must pay use tax on goods you or your company consume.
9. A completed exemption certificate from your exempt customers must be retained in your files to verify nontaxable sales. Interstate sales must be documented with a bill of lading or other proof of shipment. The terms of the sale must require shipment or delivery of the property across Utah's boundaries by the seller.
10. Tax must be rounded to a whole cent by rounding up to the next cent whenever the third decimal place is greater than four.

## Sales-based Tax Types

Tax rates vary from one community to another depending on the taxes imposed by the individual community. Tax rates are available on the Tax Commission website at [tax.utah.gov/sales/rates.html](http://tax.utah.gov/sales/rates.html).

## Combined Sales Tax Rate

The following taxes are included in the combined sales tax rate and are filed on the TC-61 Sales and Use Tax Return:

### State Sales and Use Tax

The state sales and use tax rate is 4.75 percent and applies to taxable transactions in all locations within Utah.

## Local Option Sales and Use Tax

A local rate of 1 percent is imposed on taxable transactions within a community as established by local ordinance. This tax applies to the same transactions as the state sales and use tax.

## County Option Sales and Use Tax

A county may impose a tax of .25 percent. This tax applies to the same transactions as the state sales and use tax.

## Resort Communities Tax

A qualifying resort community may impose a tax of up to 1.5 percent on the sale, use or rental of taxable goods and services within the resort community, and on the purchase of items subject to the use tax, i.e., items for use, storage, or other consumption within the jurisdiction. A community qualifies for the resort communities tax if transient room capacity in the community is greater than or equal to 66 percent of the permanent population of the community. The resort communities tax, if imposed, applies to sales subject to sales and use tax and is included in the combined tax rate.

Sales of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes are exempt from resort communities tax, but are subject to the remaining portion of sales and use tax. This exemption, however, does not apply to trailers, off-highway vehicles, snowmobiles, truck-mounted campers, etc.

## Rural Health Care Facilities Tax

Qualifying rural counties or cities may adopt a rural hospital tax of up to 1 percent. The tax is imposed on the sale of taxable goods and services sold within the adopting jurisdiction, and on the purchase of items subject to the use tax, i.e., items for use, storage, or other consumption within the jurisdiction. This tax is part of the overall sales and use tax in certain localities, and is used to fund rural county and city hospitals, and qualified nursing homes.

## Public Transit Tax

Counties, cities or districts that have a public transit system may adopt a public transit tax of up to .5 percent. Public transit tax applies in the same manner as the local sales and use tax.

## Highways Tax

Counties, cities or communities that have not already adopted the public transit tax may adopt a highways tax of .25 percent. The highways tax applies in the same manner as the local sales and use tax.

## Recreational Facilities and Botanical, Cultural, and Zoological Organizations Tax

Utah counties, cities or towns may impose a tax of .1 percent on all taxable sales and services in the county to fund these types of organizations.

## Town Option Sales and Use Tax

Qualifying towns, as described in Utah Code §59-12-1302(2), may impose the town option sales and use tax of up to 1 percent. This tax applies in the same manner as the local sales and use tax. Currently, only the town of Snowville has imposed this tax.

## Related Taxes and Fees

The following sales-related taxes and fees are filed on separate returns:



## Tourism Tax

Where adopted, this tax is imposed on the following types of transactions:

- A restaurant tax of up to 1 percent may be imposed on all prepared foods and beverages sold by restaurants.

The term “restaurant” is defined as any retail establishment, other than a theater, whose business is the sale of foods and beverages for immediate consumption. Restaurant includes dinner theaters. See Utah Code §59-12-602(4) for more information.

**Exception:** In counties that have adopted the tourism tax, it does not apply to sales of food from deli areas, pizza take-out counters or salad bars within a grocery store or convenience store whose primary business is the sale of fuel or food not prepared for immediate consumption. These sales are exempt from the tourism tax even if the store has seats or stools for customers. However, if a grocery store or convenience store has a full-service restaurant, the tourism tax is due on sales in that restaurant.

- A tourism tax of up to 7 percent may be imposed on all short-term motor vehicle rentals or leases. This applies to all rentals of passenger cars or recreational vehicles for a period of 30 days or less, except:
  - leases and rentals of motor vehicles for the purpose of temporarily replacing a motor vehicle that is being repaired pursuant to a repair or insurance agreement;
  - leases and rentals of motor vehicles that are registered for a gross laden weight of 12,001 or more pounds; or
  - leases and rentals of motor vehicles as personal household goods moving vans.

Leases and rentals of motor vehicles that would be exempt from sales tax are also exempt from this tax. Exemptions must be documented by an exemption certificate, such as form TC-721, and retained by the lessor.

- In addition to the transient room tax discussed below, qualifying counties may impose an additional tax of .5 percent on every rental of rooms in hotels, motels, inns, trailer courts, campgrounds, tourist homes, and similar accommodations for stays of less than 30 consecutive days. This is reported and remitted on form TC-61T.
- Persons filing monthly returns are entitled to a seller discount equal to 1 percent of the tourism short-term leasing tax adopted by the county.

Tourism tax is reported on form TC-61FV for monthly filers or form TC-61F for quarterly or annual filers.

## Motor Vehicle Rental Tax

A statewide motor vehicle rental tax of 2.5 percent is charged on all short-term motor vehicle rentals or leases. This is in addition to the tourism tax, if adopted, of up to 7 percent on all short-term motor vehicle rentals or leases. The statewide motor vehicle rental tax of 2.5 percent is not eligible for a seller discount.

The statewide motor vehicle rental tax, and the tourism tax if adopted, apply to all rentals of passenger cars or recreational vehicles for a period of 30 days or less, **except:**

- leases and rentals of motor vehicles for the purpose of temporarily replacing a motor vehicle being repaired pursuant to a repair or insurance agreement;
- leases and rentals of motor vehicles that are registered for a gross laden weight of 12,001 or more pounds; or
- leases and rentals of motor vehicles as personal household goods moving vans.

Leases and rentals of motor vehicles that would be exempt from sales tax are also exempt from this tax. Exemptions must be documented by an exemption certificate, such as form TC-721, and retained by the lessor.

Motor vehicle rental tax is reported on form TC-61FV for monthly filers or form TC-61F for quarterly or annual filers.

## Transient Room Tax

Utah counties may impose a transient room tax of up to 3 percent on the rental of rooms in hotels, motels, inns, trailer courts, campgrounds, tourist homes, and similar accommodations for stays of less than 30 consecutive days. The transient room tax, if imposed, is charged in addition to sales tax and in addition to other applicable taxes adopted in the community. The transient room tax does not apply to charges for meeting rooms.

Some counties have also enacted a tourism tax on lodging, as noted above.

Each county may elect to collect the tax itself or contract with the Tax Commission to collect it. The published rate chart (see [tax.utah.gov/sales/rates.html](http://tax.utah.gov/sales/rates.html)) identifies those counties that elect to collect the tax themselves.

Transient room tax is reported on form TC-61T, unless it is collected directly by the county.

## Municipality Transient Room Taxes

In addition to the county-imposed transient room tax and the tourism tax on room rents, municipalities may impose taxes of up to 1.5 percent on rents charged for the same accommodations that are subject to the Transient Room Tax.

Each municipality may elect to collect the tax itself or contract with the Tax Commission to collect it. The published rate chart (see [tax.utah.gov/sales/rates.html](http://tax.utah.gov/sales/rates.html)) identifies those municipalities that elect to collect the tax themselves.

Municipality transient room tax is reported on form TC-61T, unless it is collected directly by the municipality.

## Convention Facilities Tax

The legislative body of a county within Utah that is of the first class (counties with a population of 700,000 or more) may impose a 1.25 percent sales tax on accommodations and services through June 30, 2011, and a 1 percent sales tax on accommodations and services from July 1, 2011 through June 30, 2015, when the accommodations and services are regularly rented for less than 30 consecutive days. Revenue from the tax must be used for purposes relating to convention facilities.

## Waste Tire Recycling Fee

A waste tire recycling fee of \$1 per tire with rim sizes up to and including 24½ inches has been imposed on each purchase of new tires. The waste tire recycling fee is paid by the consumer to the tire retailer at the time the new tire is purchased. Both new and used vehicle dealers (including trailer and off-road vehicle dealers, in addition to automobile, truck and recreational vehicle dealers) are considered tire retailers for this purpose. The fee applies to all tires sold with a new vehicle. Dealers, at their option, may pay the fee to a tire dealer, provided they also pay sales tax on the purchase.

Sales tax exemptions, including the nonresident affidavit, do not apply to the recycling fee. Sales of tires or tires mounted on vehicles sold to governmental agencies or other normally exempt institutions are **not** exempt from this fee. The fee itself is not subject to sales tax. The fee does not apply to used tires, bicycle tires, or any tires attached to devices

propelled by human power, nor does it apply to tires sold and delivered out of Utah. Tire retailers are allowed to retain 2.5 percent of the fees collected and reported to cover the cost of collection.

Waste tire recycling fee is reported on form TC-61W.

## Other Information

The following miscellaneous taxes and fees may also apply to certain sellers. For more information, contact the Tax Commission.

- Motor fuel, aviation fuel, and special fuel taxes
- Lubricating oil fee
- Beer, cigarette, and tobacco products taxes
- Municipal energy sales and use tax
- Emergency services telephone charge (911 and poison control)
- Royalty payment on unprocessed brine shrimp eggs
- Multi-channel audio and video tax
- Sexually explicit business and escort service tax
- Municipal telecommunications license tax

## Calculating Sales Tax

### Definitions

#### Purchase Price and Sales Price (UCA §59-12-102(59))

**Purchase price** and **sales price** mean the total amount of consideration valued in money and for which tangible personal property or services are sold, leased, or rented.

**Purchase price and sales price include:**

- the seller's cost of the tangible personal property or services sold;
- expenses of the seller, including the cost of materials used; a labor cost; a service cost; interest; a loss; the cost of transportation to the seller; or a tax (including federal excise tax) imposed on the seller;
- a charge by the seller for any service necessary to complete the sale.

Purchase price and sales price do not include:

- a delivery charge;
- an installation charge;
- a discount in a form including: cash or term taken by a purchaser, or coupon that is allowed by a seller and that is not reimbursed by a third party;
- the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser:
  - a. the amount of a trade-in;
  - b. the following from credit extended on the sale of tangible personal property or services: separately stated interest charges; financing charges; or carrying charges; or
  - c. a tax or fee legally imposed directly on the consumer.

#### Tangible Personal Property

Tangible personal property is property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, prewritten software, and digital and electronic goods.

#### Real Property

Real property is classified as any right, title, estate, or interest in land, including all buildings or structures on the land.

Real property includes construction materials that typically lose their separate identity as personal property once incorporated into the real property. These include lumber, bricks, nails and cement used to construct buildings or structures on the land, as well as fixtures such as furnaces, built-in air conditioning systems, built-in appliances, or other items added to or incorporated into real property.

#### Tangible Personal Property Permanently Attached to Real Property

Tangible personal property is classified as permanently attached to real property if (1) the attachment is essential to use the tangible personal property, and (2) the tangible personal property will remain attached over its useful life. This includes attaching an accessory to the tangible personal property if it is essential to the operation of the tangible personal property and is attached solely for that purpose. This classification is further supported if (1) detachment would cause substantial damage to the tangible personal property, or (2) detachment would require substantial alteration or repair of the real property. The permanently attached tangible personal property retains its classification even if it is temporarily detached for repair or renovation onsite.

The determination that tangible personal property is permanently attached will be made without regard to its attachment to a line that supplies water, electricity, gas, telephone, cable, or other similar services.

The permanently attached classification does not include (1) attaching portable or movable tangible personal property for convenience, stability, or for an obvious temporary purpose, or (2) detachment for repair or renovation other than onsite.

#### Delivery Charges

Delivery charges means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Purchase price and sales price of tangible personal property do not include delivery charges if separately stated.

#### Installation Charges

Installation charges means charges for permanently installing tangible personal property to real property. Installation charges do not include charges for repairs or renovations of tangible personal property. Purchase price and sales price of tangible personal property do not include an installation charge if separately stated.

Sales of real property are nontaxable. For tangible personal property that becomes part of the underlying realty upon installation, the transaction to purchase and install the tangible personal property is considered the sale of real property and, accordingly, is nontaxable. The contractor is considered to be the user of the materials and is responsible for paying sales and use tax.

#### Repair Charges

Repair charges means repair or renovation of tangible personal property that is not permanently attached to real property or attaching tangible personal property to other tangible personal property.

Charges for labor to repair, renovate, wash, or clean tangible personal property are subject to sales tax. Parts used to repair or renovate tangible personal property, whether or not the parts are actually used, are also subject to sales tax.

Charges for labor and parts used to service, repair, or renovate real property are not subject to tax. For real property repairs, the contractor is considered to be the user of the materials and is responsible for paying sales and use tax.

## Taxes or Fees Imposed on the Seller

Current Utah law allows municipalities to impose and collect a license fee or tax on any business within the municipality. Examples of city-imposed taxes include a gross receipts tax on all businesses within the city and taxes directed at a particular category of business, such as innkeepers. City-imposed taxes (other than sales and use taxes imposed under the Utah Sales and Use Tax Act) must be included in the taxable sales reported on the state sales and use tax return. For example, a seller makes sales in a city that has imposed a two percent gross receipts tax on revenues. City and state taxes are calculated as follows.

Taxable sales	\$100.00
City imposed gross receipts tax @ 2%	<u>2.00</u>
Amount subject to state and local taxes	\$102.00
Applicable sales tax rate @ 6.125%	<u>x.06125</u>
State and local sales taxes remitted to the state	\$6.25
Transaction total (item cost plus taxes)	\$108.25

## Determining Tax Base

### Taxable Sales

Sales of tangible personal property and certain services to final consumers are taxable. The following transactions are taxable unless a specific exemption applies:

- Retail sales or purchases of tangible personal property made within Utah.
- Tangible personal property stored, used, or consumed in Utah.
- Rentals and leases of tangible personal property if the situs (location) of the tangible personal property is in this state, the lessee took possession of the tangible personal property in this state, or the tangible personal property is stored, used, or otherwise consumed in this state.
- Labor to repair, renovate, wash, clean, and install tangible personal property in connection with other tangible personal property. This includes maintenance agreements.
- Laundry and dry cleaning services, other than coin-operated laundry and dry cleaning services.
- Admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity. User fees include charges for access to a video, video game, television program, or cable or satellite broadcast, if that access occurs at any location other than the individual's residence.

- Tourist home, hotel, motel, or trailer court accommodations and services regularly rented for less than 30 consecutive days.
- Passenger fares on intrastate common carriers, other than taxis and commercial airlines.
- Telegraph services and intrastate telephone service.
- Meals at restaurants or other eating places.
- Sales for commercial use of gas, electricity, heat, coal, fuel oil, or other fuels.
- Sales for residential use of gas, electricity, heat, coal, fuel oil, or other fuels are taxed at the state rate of 2 percent plus any local and/or public transit tax applicable.
- Sales of prepaid telephone calling cards, including vending machine sales of prepaid telephone calling cards.
- Memberships that entitle the purchaser to discounted or free merchandise or services of a type subject to the sales tax. Examples include memberships allowing the card holder to enter a facility and make purchases of merchandise at the stated price without any additional markup, and video memberships that allow members to rent videos at half price. All purchases made with these membership cards are subject to sales tax at the time of purchase unless a specific exemption applies.

**Note:** For more information on taxable sales and purchases, refer to the **Additional Information** section.

## Determining Tax Rate (Sourcing)

Sourcing is defined as attributing a sale to a specific taxing jurisdiction in order to determine the tax rate to charge.

Point of sale sourcing will remain in effect through June 30, 2006. For sellers with one or more fixed places of business, this means sales will continue to be sourced at the place of business where the sales occur, regardless of whether the goods are delivered. For sellers with a non-fixed place of business (e.g. vending machine operators, mobile tool companies, etc.), sales will continue to be sourced to where the sales take place. If a business sells merchandise that is shipped from outside Utah direct to a consumer in Utah, and if the seller engages in business in Utah (has nexus), then the sale is sourced to the location of the purchaser.

## Tax Rate Changes

The Tax Commission will provide sellers with advance notice of rate changes by publishing the information on its website at [tax.utah.gov/sales/rates.html](http://tax.utah.gov/sales/rates.html). This site contains a list of rate changes and the current tax rate chart.

Tax rates and jurisdiction boundaries may change only at the beginning of a calendar quarter and will be posted 60 days prior to the effective date. Failure to receive notice does not relieve a seller of the obligation to collect sales and use tax at the correct rate.

Rate changes for services covering a period starting before and ending after the statutory effective date will be as follows:

- For a rate increase, the new rate applies to the seller's first billing period starting on or after the effective date.
- For a rate decrease, the new rate applies to the seller's bills issued on or after the effective date.

### Example 1

A local dealer arranged an automobile lease contract for 36 months, and it accommodated the customer's wish that the payment be made mid-month. Halfway through the contract



period, the sales tax rate increased, effective Oct 1, 2004, which increased the monthly lease payment. The payment made on Sep 15, 2004, for the period Aug 16 to Sep 15, was subject to the old tax rate. Since the next payment period, due Oct 15, was for the period that started Sep 16, before the rate went into effect, it was taxed at the old rate, even though the payment was made after the new rate went into effect. However, the following payment, due Nov 15, was for a period (Oct 16 to Nov 15) that started after the new rate went into effect, so was subject to the new rate, and therefore the customer paid the higher rate.

### Example 2

Using the same scenario above, instead of a tax rate increase there was a tax rate decrease effective Oct 1. The payment due on Sep 15 was at the old higher rate. However, the payment due Oct 15 was at the new lower rate since the bill was issued after the rate went into effect, even though the period started before the effective date. The October and all subsequent bills were taxed at the new lower rate.

## Sales and Use Tax Exemptions

Utah law provides some exemptions from sales and use tax. Some of the more common exemptions are outlined below. For complete details on exemptions, refer to Utah Code §59-12-104. If a sale qualifies for an exemption that is either entity-based or use-based, the seller must obtain standard exemption information from the purchaser. Exemption information may be collected by the seller either electronically or on Utah State Tax Commission form TC-721, Exemption Certificate. If captured electronically, the same information for the specific exemption that is on form TC-721 must be retained. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used. Purchasers and sellers are allowed to use substitute forms if they contain the same information as Utah State Tax Commission form TC-721.

If the exemption is product based, no exemption certificate is necessary.

### Entity-based Exemptions

An entity-based exemption is determined by who purchases or sells the product. An exemption certificate is required.

The following are exempt:

- Sales to United States and Utah government agencies. Currently, sales of construction materials to most Utah government agencies are exempt only if installed by the agencies' employees. Construction materials purchased by or on behalf of public elementary and secondary schools are exempt from the sales tax. The construction materials must be clearly identified and segregated, and they must be installed or converted into real property owned by the school. See Tax Commission Rule R865-19S-23 for information relating to documentation of sales to government agencies.

To qualify as a sale made to a U.S. or Utah government agency, the purchase must be made with the government entity's funds. A purchase does not qualify for this exemption if a government agency employee pays for the purchase with personal funds, even if the employee is reimbursed for the purchase by the government agency. Government employees traveling on official business are NOT exempt from these taxes unless they present:

- a properly completed exemption certificate;
- a check, purchase order, or voucher supplied by the U.S. or Utah government agency; or

- a U.S. government credit card (also called SmartPay cards). For detailed information on Federal government credit cards, please refer to FTA bulletin B-07/02, which can be found at [www.taxadmin.org/fta/rate/b-0702.pdf](http://www.taxadmin.org/fta/rate/b-0702.pdf)

The sales tax exemption for purchases by Utah state and local government entities does NOT apply to purchases by a state other than Utah or to purchases by any local government entity located outside of Utah. Utah state employees must pay taxes on all lodging, regardless of the credit card used. Utah government purchases of items, other than travel, are tax exempt if purchased with a Utah state purchasing card or paid with a Utah state check. Purchasing cards are issued by US Bank. The cards display the Utah state seal, include the words "State of Utah Tax Exempt" and are imprinted with the individual purchaser's name and Utah state agency. While sellers are required to maintain evidence that a purchase qualifies for the sales tax exemption as a sale to the federal or Utah State government, this requirement is satisfied if the seller maintains a record of the qualifying credit card number, a copy of the government entity check, purchase order, or voucher, or a properly completed and signed form TC-721, Exemption Certificate.

- Sales made to or by:
  - an area agency on aging; or
  - a senior citizen center owned by a county, city or town; and
  - sales made by a senior citizen center that contracts with an area agency on aging.
- Certain enrolled members of Native American tribes (including the tribe itself) may purchase tax free if:
  - the member has a tribal card showing a Federal Bureau Number;
  - the sale is to an enrolled tribal member and delivery is taken on the member's own reservation (in the case of the Ute Indian Tribe, the sale must be made on or delivery must be made to tribal trust lands within the Uintah and Ouray reservations); and
  - in the case of sales to the tribe itself, a purchase order, exemption certificate, or similar evidence of tribal identity must be presented.

Sales of tangible personal property made off the reservation to enrolled members of the tribe are taxable. They are exempt from tax only if delivery is made to the reservation by the seller or a licensed common carrier.

- Foreign diplomats – Certain foreign diplomatic employees are exempt from sales tax to varying degrees. These diplomatic personnel are issued tax exemption cards by the U.S. Department of State. The cards are color-striped, indicating the type and/or amount of sales tax exemption. Bearers of cards with a green stripe are not exempt from taxes on hotel rooms. Sellers are instructed to retain a photocopy of the card for evidence of exemption. The cards are not valid to make exempt purchases of telephone service or other utility services; the U.S. Department of State issues special exemption certificates for such purposes.
- Feed, seed, baling ties, etc. sold to commercial agricultural producers.
- Sales of tangible personal property used or consumed primarily and directly in farming operations. Charges for labor and/or parts (including lubricating oil, antifreeze or other supplies) used to repair or maintain off-road machinery and equipment used primarily and directly in agricultural production are also exempt.



- Sales of electricity and fuel for industrial use as defined in Utah Code §59-12-102.
- Sale or lease of semiconductor fabricating or processing materials.
- Sales relating to schools and fundraising.
- Sales to religious or charitable institutions. In the case of sales of \$1,000 or more, or sales made pursuant to a contract between the seller and the religious or charitable institution, the exemption shall be at the point of sale. In all other cases, the exemption shall be in the form of a refund of sales or use taxes paid at the point of sale made by the religious or charitable institution directly to the Tax Commission.

To be eligible for the exemption, the organization must be recognized as exempt under Section 501(c)(3) of the Internal Revenue Code, and must have obtained a sales tax exemption number from the Tax Commission. Religious and charitable organizations may apply to the Tax Commission for a refund of sales taxes paid by completing form TC-160.

- Sales of construction materials to a religious or charitable institution or to a contractor purchasing on behalf of a religious or charitable institution.

## Use-based Exemptions

A use-based exemption is determined by the purchaser's use of the product. An exemption certificate is required.

The following are exempt:

- Sales of certain vehicles to nonresidents for use outside of Utah. Use form TC-583, Nonresident Affidavit for Sales Tax Exemption, for this exemption. See Tax Commission Rule R865-19S-98.
- Property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product.
- Sales for resale or lease. In addition, the lease of tangible personal property is exempt if it meets all of the following conditions:
  - the property is part of a sale-leaseback transaction;
  - sales or use tax was paid on the initial purchase of the property;
  - the leased property will be capitalized and the lease payments will be accounted for as payments made under a financing arrangement; and
  - the sale and leaseback must have taken place on or after July 1, 1995.
- Purchases of tangible personal property upon which a sales and use tax was paid to another state are exempt, except if the tax paid was lower than Utah's rate. If lower than Utah's rate, the purchaser must pay the difference. No adjustment or credit is allowed if the tax paid was greater than Utah's rate.
- Sales price of machinery and equipment used for normal operating replacements and purchased by a qualified manufacturer or scrap recycler described in the Standard Industrial Classification Manual (SIC) classification 2000-3999. This exemption does not include amounts for repairs and maintenance. Purchasers of the qualifying machinery and equipment that fail to report this on the informational line of the Sales and Use Tax Return shall be penalized the lesser of \$1,000 or 10 percent of the sales and use tax that would have been imposed if the exemption had not applied.

- Charges for labor to repair or renovate tangible personal property are exempt from sales and use tax if the parts used in the repair or renovation are exempt from sales and use tax.
- Parts used in the repair or renovation of the following exempt tangible personal property:
  - tooling or equipment used or consumed exclusively in the performance of an aerospace or electronics industry contract with the United States government;
  - tangible personal property used or consumed primarily and directly in farming operations;
  - snow making equipment, ski slope grooming equipment, and passenger ropeways;
  - hearing aids and hearing aid accessories.
- Sales of nonreturnable containers, labels, bags, shipping cases, and casing to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by the manufacturer, processor, wholesalers, or retailer.
- Purchases of lists or databases containing names and addresses that are used to send direct mail.

## Product-based Exemptions

A product-based exemption is based on the description of a product and is not based on who purchases the product or how the purchaser intends to use the product. Product-based exemptions do not require an exemption certificate.

The following are exempt:

- Isolated or occasional sales, if the sale is not an integral part of a business whose primary function is the sale of tangible personal property.
- The amount paid for a drug. A drug is defined as a compound, substance or preparation that is intended for the diagnosis, cure, mitigation, treatment or prevention of disease or is intended to affect the structure or function of the human body. Food, dietary supplements, alcoholic beverages, and prosthetic devices are not considered drugs.
- Sales or rentals of durable medical equipment, including parts used to repair the equipment and replacements.
- Sales or rentals of mobility enhancing equipment that is primarily used to provide or increase the ability to move from one place to another for a person with limited mobility.
- A prosthetic device, including repair or replacement parts. Corrective eyeglasses, contact lenses, hearing aids or dental prostheses are not considered prosthetic devices.
- Sales of hearing aids and hearing aid accessories, except batteries, and charges for labor and/or parts used in the repair or renovation of hearing aids and hearing aid accessories. Sales of hearing aid batteries are taxable.
- Forty-five percent of the sales price of a new manufactured home and 100 percent of the sales price of a used manufactured home.
- Fees charged for certain coin-operated amusement devices when the seller does not assist in the sales of tokens and the seller is unable to collect the sales tax at the time a person inserts coins into the amusement device.
- Sales through coin-operated car washes and dry cleaning and laundry machines. However, this exemption does not apply to sales where the customer paid a cashier or paid at the gas pump and received a code or a token to operate the coin-operated machine. These code-operated washes are taxable.

- Interstate sales which are delivered by common carrier or the seller to a point outside of Utah. A copy of the bill of lading, freight bill, form TC-757 or other evidence of out-of-Utah delivery must be kept by the licensed seller or retailer. If the property is delivered in the state of Utah to a consumer, the tax applies, regardless of its removal from Utah. See Tax Commission Rule R865-19S-44.
- Motor fuels and special fuels subject to Utah state fuel excise tax.
- Fees charged by taxicabs, including horse-drawn cabs or carriages.
- Sales of hay.
- Exclusive sale of locally grown crops, seedling plants, or garden, farm, or other agricultural produce, if sold by a producer during the harvest season. Locally grown includes those seasonal crops grown within the boundaries of Utah, but excludes those seasonal crops grown outside Utah's boundaries.
- Sales of telephone service charged to a prepaid telephone calling card.
- Sales of newspapers or newspaper subscriptions.
- Sales of water in a pipe, conduit, ditch, or reservoir.
- Room and trailer space rentals for 30 consecutive days or more.
- Sales of currency or coinage that constitute legal tender of the United States or of a foreign nation.
- Sales of an ingot, bar, medallion, or decorative coin having a gold, silver, or platinum content of 80% or more and that does not constitute legal tender of any nation.
- Admissions to higher education athletic events.
- Sales of food and food ingredients, prepared food or alcoholic beverages by a church or a charitable institution if the items are not available to the general public.
- Sales of food and food ingredients, prepared food or alcoholic beverages by an institution of higher education if the items are not available to the general public and are prepaid as part of a student meal plan offered by the institution of higher education.
- Sales of food and food ingredients, prepared food or alcoholic beverages provided at a medical facility or a nursing facility for inpatient meals. See Tax Commission Rule R865-19S-61.

## Additional Information

### Goods Consumed by the Seller

Items consumed by the seller are subject to use tax on the amount of the seller's cost of the items, not the selling price. Items consumed by the seller include:

- items taken from a seller's inventory and used by the seller;
- samples given away for advertising; and,
- products consumed by employees without payment.

When making purchases for store use from local businesses, tax should be paid at the time of purchase. For example, office supplies and equipment, such as labels for internal accounting, cash register tapes, returnable containers, and furniture are taxable at the point of sale.

The seller may purchase grocery bags and sacks and other non-returnable packaging material tax free that go out the door with the customer.

No tax is due on items discarded because of spoilage, broken packaging, and similar incidents, because they are not considered as consumed by the seller.

The purchase of printed advertising inserts is taxable unless the inserts contain the name and publication date of the newspaper distributing the inserts and are included in and distributed with the newspaper. See Tax Commission Rule R865-19S-65.

## Coupons and Rebates

Coupons and rebates are handled in the following manner:

- Coupons for which a seller is reimbursed by a third party, such as a manufacturer or distributor, do not reduce the amount subject to sales tax. The amount subject to sales tax is the sales price of the item before the value of the coupon has been deducted.
- An in-store coupon or a coupon issued by a seller for which no reimbursement by a third party is received is considered a reduction in the sales price. The taxable amount is the net amount paid for the item after deducting the value of the in-store coupon.
- Amounts of manufacturer's rebates, whether paid to the purchaser or retained by the dealer as a down payment, are not subject to tax.

## Premiums and Gifts

A premium or gift given away with the sale of a product subject to tax is considered part of that sale, and the purchase of the premium or gift by the retailer is not taxable. Items given away without requiring a specific purchase and items given away as advertising are considered consumed by the retailer and the retailer must pay tax on the retailer's cost of those items.

## Returned Merchandise

A customer who receives credit for returned merchandise is entitled to a refund of the sales tax. If a customer is given a partial refund or allowance, the customer is entitled to a refund of sales tax on the portion of the original sales price refunded.

## Returned Checks and Bad Debts

Bad debts may be claimed only by a seller. A seller is entitled to a sales tax adjustment for returned checks and bad debts. Nontaxable amounts, such as cash back to the customer and exempt charges, must be deducted from the total amount of the returned check or bad debt amount to arrive at the net write-off amount. The amount of the adjustment to be claimed on the sales tax return is determined by dividing the net write-off amount by one (1) plus the tax rate adopted in the community at the time of sale.

For example, if the net write-off amount is \$100 and the tax rate is 6.5 percent, the amount of the adjustment to be claimed on the return is determined by dividing \$100 by 1.065, resulting in a claim of \$93.90.

If an item is repossessed, a credit may not be taken, with the exception of motor vehicle repossessions. Beginning July 1, 2005, sales tax credit for certain motor vehicle repossessions is allowable. A seller of a motor vehicle may claim a credit for tax the seller collected on a motor vehicle the seller repossesses and resells. The amount of the credit is equal to the portion of the motor vehicle's purchase price subject to tax and remains unpaid at the time of the motor vehicle repossession, multiplied by the tax rate in effect when the seller collected the tax. Credit for tax on repossessions is allowed only to the seller. However, this does not preclude arrangements between the seller and third-party financial institutions.

## Special Events

When tax is included in the sales price of items sold at special events, the tax must be calculated separately. To determine the sales price without tax, the proceeds of an accounting period are divided by one (1) plus the tax rate adopted in the community where the special event was held. For example:

- Where the combined rate is 6.0%, divide by 1.060
- Where the combined rate is 6.125%, divide by 1.06125

## Vending Machine Sales

Vending machine sales, such as machines that dispense soft drinks, gumballs, cigarettes or novelty toys, are taxed in the same manner as special event sales. Tax is included in the vended price. However, a seller of food and food ingredients or prepared food of \$1 or less has the option of paying tax on 150 percent of the seller's cost, including incoming freight costs. If this option is taken, the sale itself is exempt, but the taxable amount (150 percent of cost) must be reported as goods consumed on the return. If the vending machine is owned and serviced by a vending machine company, the tax is the responsibility of the vending machine company.

## Returnable Containers

Deposits on returnable containers, bottles, pallets and drums are subject to tax. When containers are returned for refund of the deposit, sales tax should be refunded. Bottle deposits are exempt from tax when purchased with food stamps or Women, Infants and Children (WIC) coupons.

## Food Stamps and WIC

Sales of food paid with federal food stamps or WIC coupons are exempt from sales and use tax.

## Videos and DVDs

Videotape and DVD rentals are taxed in the same manner as sales of tangible personal property.

## Newspapers and Postage

Sales of newspapers and postage stamps are exempt. To qualify as a newspaper, publications must:

- be published daily or weekly;
- be intended for circulation among the general public;
- contain matters of general interest and must report on current events; and
- must not constitute a book when multiple issues are put together.

Purchases of regularly circulated newspapers, such as *The Salt Lake Tribune*, *Deseret Morning News*, *USA Today*, and local town papers such as the *Davis County Clipper*, are exempt from sales tax. Purchases of tabloids, such as *Enquirer*, *Star*, *Globe*, etc., are not considered newspapers and are taxable. Sales of magazines, such as *US News and World Report*, *Ladies Home Journal* and *Time*, are taxable.

## Money Orders, Faxes and Photocopies

Money order fees and charges for sending or receiving faxes are not subject to sales tax. Photocopying charges are taxable.

## Cigarettes and Tobacco Products

Any entity selling cigarettes and/or tobacco products must obtain a license (included on the general application form TC-69) for each selling location. Most sellers may apply online using OneStop Business Registration at [business.utah.gov/registration](http://business.utah.gov/registration). Civil penalties apply to any licensee selling to underage youth (under 19 years). Questions related to sales to underage buyers should be directed to your local health department.

The sale of cigarettes and/or tobacco products is subject to state and local sales tax. The amount subject to sales tax includes the cigarette or tobacco products tax. Tobacco products tax is due from the first purchaser within Utah. If a retail store purchases directly from an out-of-Utah source not collecting the tax, the retail store must be registered and bonded, and remit the tobacco products tax along with form TC-553 on the last day of the month following each calendar quarter.

Cigarette tax is paid by purchasing stamps from the Tax Commission, which must be affixed to each package within 72 hours of being received. Stamps are only available to registered and bonded businesses. No cigarettes may be sold without a Utah stamp on each pack. Any cigarette package without the proper stamp is subject to a \$25 penalty and confiscation.

Application and registration for tobacco products and/or stamping is also made on the general application, form TC-69.

## Trade-in on Manufactured Homes

Utah Code §59-12-104 provides for an exemption of 45 percent of the sales price of any new manufactured home and 100 percent of the sales price of any used manufactured home.

When there is a trade-in, the sales price subject to the exemption is calculated as follows:

1. Subtract any trade-in amount allowed from the original sales price. This difference is the net sales price.
2. Multiply the net sales price by the exemption allowed by law (45 or 100 percent) to determine the amount of the net sales price exempt from sales tax.
3. Subtract the amount computed in step 2 from the amount in step 1. This is the portion of the net sales price subject to sales tax.

For example, if a dealer accepts a trade-in at a value of \$8,000 against the purchase of a new manufactured home valued at \$60,000, the calculation would be as follows.

Original sales price	\$60,000
Less trade-in amount	- 8,000
Net sales price	\$52,000
Portion of net sales price exempt from sales tax (\$52,000 x .45)	\$23,400
Portion of net sales price subject to sales tax (\$52,000 - \$23,400)	\$28,600

## Starting a New Business

If starting a new business, see Publication 38, *Doing Business in Utah* [tax.utah.gov/forms/](http://tax.utah.gov/forms/).

## Forms

The following forms are available at [tax.utah.gov/forms/](http://tax.utah.gov/forms/) or by calling the Tax Commission automated forms order hot-line at (801) 297-6700 or 1-800-662-4335 ext. 6700.

- TC-51 – Nexus Questionnaire
- TC-55A – Claim for Refund of Motor Vehicle Fees or Sales Tax
- TC-61 – Utah Sales and Use Tax Return
- TC-61 Schedule PS – Point of Sale
- TC-61 Schedule PSD– Point of Sale Detail
- TC-61DF – Sales Tax Refund Coupon Booklet for Donated Food
- TC-61E – Municipal Energy Sales and Use Tax
- TC-61F – Tourism, Recreation, Cultural, Convention Facilities and Car Rental Tax Return
- TC-61FV – Tourism, Recreation, Cultural, Convention Facilities and Car Rental Tax Return, monthly
- TC-61N – Sales Tax Refund Request for Religious or Charitable Organizations
- TC-61P – Instructions for Filing Refund Claims for Sales Tax Paid on Pollution Control Facilities
- TC-61Q – Utah Sales Tax Sourcing Schedule
- TC-61T – Transient Room Tax Return
- TC-61W – Waste Tire Recycling Fee Return
- TC-69 – Utah State Business and Tax Registration Application
- TC-69B – Additional Business Locations for a Sales Tax Account
- TC-73 – Sales Tax Exemption Contract
- TC-85 – Agreement for Remitting through Electronic Funds Transfer (EFT)
- TC-160 – Application for Sales Tax Exemption for Religious and Charitable Institutions
- TC-583 – Nonresident Affidavit for Sales Tax Exemption
- TC-719 – Sales Tax Exemption Affidavit for Authorized Interstate Carriers
- TC-721 – Exemption Certificate
- TC-721NR – Sales Tax Exemption Certificate for Non-Utah Retailers Accepting Delivery of Merchandise in Utah
- TC-738 – Petition for Redetermination
- TC-757 – Affidavit of Out-of-State Delivery
- TC-762 – Lease/Rental Sales Tax Affidavit

## Sales Tax Publications

The following publications are available at [tax.utah.gov/forms/](http://tax.utah.gov/forms/) or by calling the Tax Commission forms order hot-line at (801) 297-6700 or 1-800-662-4335 ext. 6700.

- Pub 5 – Sales Tax Information for Motor Vehicle/Marine Dealer/Body & Repair Shops
- Pub 25 – Sales and Use Tax General Information
- Pub 35 – Sales Tax Guidelines for Public and Private Elementary and Secondary Schools
- Pub 37 – Business Activity and Nexus in Utah
- Pub 38 – Doing Business in Utah
- Pub 40 – Personal Liability for Unpaid Sales, Fuel and Withholding Taxes
- Pub 42 – Sales Tax Information for Sales, Installation and Repair of Tangible Personal Property Attached to Real Property
- Pub 45 – Sales Tax Information for Nurseries, Florists, Landscapers and Related Industries
- Pub 53 – Sales Tax Information for Health Care
- Pub 54 – Sales Tax Information for Public Utilities
- Pub 55 – Sales Tax Information for Restaurants
- Pub 56 – Sales Tax Information for Lodging Providers
- Pub 58 – Utah Interest and Penalties

## Internet Information

### Utah State Tax Commission Website

[www.tax.utah.gov](http://www.tax.utah.gov)

This site has links to:

- Forms and publications
- Online sales tax return filing
- OneStop Business Registration
- Current and past sales tax rates
- Internal Revenue Service
- Utah Counties (business license, property tax)
- Multistate Tax Compact
- Other States' Revenue Departments

### State of Utah Website

[www.utah.gov](http://www.utah.gov)

This site has links to:

- Workforce Services (unemployment)
- Labor (worker's compensation)
- Commerce (corporations, DBA registration)

This publication is provided for general guidance only. It does not contain all sales or use tax laws or rules. If you need additional information, call (801) 297-2200 or

1-800-662-4335 (outside Salt Lake area), or send email to [taxmaster@utah.gov](mailto:taxmaster@utah.gov).



# Specific Information for Restaurants

## Definition of a Restaurant

A restaurant is any retail establishment whose primary business is the sale of prepared food for immediate consumption. Retail establishment means a single outlet, whether or not at a fixed location, operated by a seller. Primary business means the source of more than 50 percent of the revenues of the retail establishment. Examples of restaurants include:

- full service dining
- fast-food
- coffee shops
- cafeterias
- luncheonettes
- soda fountains
- catering facilities
- private clubs and taverns
- sidewalk vendors
- food concessions in malls

The definition of a restaurant does not include:

- a retail establishment whose primary business is the sale of fuel or food items for off-premise, but not immediate, consumption; or
- a theater that sells food items. A theater is an indoor or outdoor location for the presentation of movies, plays, or musicals, but does not include a dinner theater. The sale of food at dinner theaters or concerts is subject to the restaurant tax. Food courts, even if located in close proximity to a theater, are considered restaurants and are subject to the restaurant tax.

### Multiple Lines of Business at One Location

In the case of a retail establishment that has more than one line of business, the line of business that generates the highest revenues when compared to the other lines of business is considered the primary business.

**Example:** A candy store sells prepackaged boxes of candy accounting for 80 percent of overall revenue and also sells small candy items over the counter for immediate consumption accounting for 20 percent of overall revenue. In this instance, the candy store is not considered a restaurant, nor does the restaurant tax apply to the items sold for immediate consumption.

### Multiple Retail Establishments at One Location

In other instances, a single seller engaged in multiple lines of business at one location may be deemed to be operating multiple retail establishments if the lines of business are not commonly regarded as a single retail establishment or if there are other factors indicating the lines of business should be treated separately.

**Example:** A stadium owner charges admission to an event and also sells prepared food at a concession stand inside the stadium. In this instance, the operation of the concession stand by a stadium owner or promoter with a financial interest in ticket sales or admission charges to an event is considered a separate line of business constituting a retail establishment. Therefore, the concession stand is a restaurant and subject to the restaurant

tax. Any ticket sales for events are considered a separate retail establishment and not subject to the restaurant tax.

A retailer who sells foods or beverages for immediate consumption, but is uncertain if the business is a restaurant for purposes of this tax, must request an exemption from the Tax Commission before being excused from collecting the tax. The request must be in written form and indicate the circumstances for which the seller considers the business exempt. All requests should be addressed to:

Taxpayer Services Division  
Technical Research Unit  
Utah State Tax Commission  
210 North 1950 West  
Salt Lake City, Utah 84134

## Application of Restaurant Tax

In addition to sales and use tax, Utah Code §§59-12-602 through 59-12-603 authorizes county governments to impose a tourism tax of up to 1 percent on all sales of prepared foods by restaurants. Emery, Millard, Piute, and San Juan counties have not imposed the restaurant tax. Utah County has imposed the restaurant tax at .9 percent. All other counties have elected to impose the full 1 percent.

The restaurant tax is reported and paid on a separate return, due at the same time the business owner's sales and use tax return is due:

- Quarterly filers use form TC-61F, *Tourism, Recreation, Cultural, Convention Facilities & Car Rental Tax Return*.
- Monthly filers use form TC-61FV, *Tourism, Recreation, Cultural, Convention Facilities & Car Rental Monthly Tax Return*.

Restaurants or caterers located in counties that impose the restaurant tax are required to charge an additional one percent tax on all sales, even if the prepared foods are delivered to a location that does not impose the restaurant tax.

Restaurants or caterers located in counties that do not impose the tax will not charge the restaurant tax on any sales.

Corkage, set ups, and required gratuities are subject to both sales and restaurant tax, as are charges for room service meals and beverages.

Restaurant sales of items other than prepared foods and beverages, such as souvenir T-shirts, are not subject to restaurant tax. Other examples include equipment rental, use of flowers and decorations, and the sale of ice carvings for banquets.

## Restaurant Operations

1. A restaurant must pay sales or use tax on:
  - items purchased primarily for advertising, such as matchbooks and complimentary menus;
  - the purchase price of utensils and supplies. Paper or plastic products discarded after use by the customer are exempt; and
  - the cost of ingredients for meals furnished free to employees.
2. Sales made through vending machines are taxable. Tax should be divided out of the total proceeds. For example, assuming a tax rate of 6.125 percent and proceeds of \$550.00, the taxable sales are \$518.26.

**\$550 divided by 1.06125 = \$518.26**

The law provides an optional method of taxing food or drink products where the vended price is \$1 or less. The option allows the operator to pay tax on 150 percent of the purchase price, and treat the sale itself as exempt. See Tax Commission Rule R865-19S-74 for more information.

3. If a restaurant sells prepackaged foods as incidental items with the sale of prepared foods, restaurant tax applies to the prepackaged food as well.
4. If meal tickets or coupons are sold by persons engaged in selling those particular taxable goods or services, sales or use tax must be collected on the selling price of the meal tickets or coupons.

## Tips and Gratuities

Tips are not subject to sales tax as long as they are not mandatory and are not shown on the invoice. Service charges, gratuities or other charges shown on the invoice are subject to tax.

If the charges are subject to sales tax, they are also subject to restaurant tax.

## Cover Charges

Cover charges to enter a restaurant, tavern, club, or similar establishment are subject to sales tax as an admission, but are not subject to restaurant tax.

## Admission Charges

Admissions and user fees charged for any amusement, entertainment, recreation, exhibition, cultural, or athletic activity are subject to Utah sales tax.

Taxable activities include, but are not limited to, admissions and user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing and wrestling matches, closed-circuit television broadcasts, billiard or pool parlors, bowling lanes, golf and miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, and horseback rides.

## Exceptions

The law states that admission and user fees include season passes, but does not include annual membership dues paid to a private organization.

Tax Commission Rule 865-19S-33, clarifies that fees beyond the annual membership dues paid to a private organization such as a country club for use of the golf course, pool, or any other related activity, are considered season passes and are therefore taxable. The rule defines annual membership dues paid to a private organization to include only membership dues paid to an organization whose members, directly or indirectly, establish the level of the membership dues.

The rule provides that amounts paid for the following activities are not admission or user fees:

- lessons, public or private;
- sign-ups for participation in amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, if the nonprofit corporation or organization's primary purpose, as stated in its articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

- sign-ups for participation in school activities. Sign-up for participation in school activities excludes attendance as a spectator at school activities.

Fees for the above activities must be separately stated on an invoice in order to remain untaxed. If, for example, fees for a golf lesson are included with fees for use of the golf course, the entire amount is subject to sales tax.

## Alcoholic Beverages

### Liquor, Mixed Drinks, Set-ups and Wine

Restaurants, taverns, and clubs selling liquor, mixed drinks, and wine are not required to charge sales tax on the liquor portion. The Utah Department of Alcoholic Beverage Control (DABC) collects sales tax on all items sold in state liquor stores. However, the seller must remit sales tax on the amount charged for set-ups and wine service. The entire cost of a mixed drink (including the liquor) is subject to the one percent restaurant tax.

The DABC does not collect the 1 percent (or adopted rate) restaurant tax; therefore, restaurants, taverns and clubs must collect the restaurant tax on alcohol and set-up sales in those counties that have adopted the tax. To compute the restaurant tax due on alcohol, the seller multiplies the cost of the alcohol, prior to the assessment of liquor and sales taxes, by the 1 percent (or adopted rate) restaurant tax rate. Following are examples of the calculation (based on a 6.25 percent sales tax rate).

### Example 1 Including Restaurant Tax

	Sales Price Per Drink (including tax)	Sales Tax	Restaurant Tax	Total
Liquor	\$2.00	—	\$.02	\$.02
Set-up	\$3.00	\$.18	\$.03	\$.21
Total				\$.23

**Example 1** demonstrates the calculation for counties that have chosen to impose the 1 percent restaurant tax. The restaurant tax on the liquor (\$.02) is calculated by:

1. dividing the \$2 cost per drink by 1.1925 to obtain the cost of the alcohol prior to the assessment of alcohol (13 percent) and sales (6.25 percent) taxes. In this example, that results in the amount of \$1.68; and
2. by multiplying the \$1.68 by .01 (the restaurant tax) to calculate the amount of restaurant tax due on the alcohol.

In **Example 1**, taxes on the set-up (\$.18) are calculated by:

1. dividing the \$3 sales price by 1.0725 to obtain the cost of the set-up prior to the assessment of sales (6.25 percent) and restaurant (1 percent) taxes. In this example that results in the amount of \$2.80; and
2. by multiplying the \$2.80 by .0625, the sales tax rate, to calculate the amount of sales tax due on the set-up, and by .01, the restaurant tax rate, to calculate the amount of restaurant tax due on the set-up.

### Example 2

#### Excluding Restaurant Tax

	Sales Price Per Drink (including tax)	Sales Tax	Total
Liquor	\$2.00	—	\$ .00
Set-up	\$3.00	\$ .18	\$ .18
Total			\$ .18

**Example 2** is the calculation for counties that have chosen not to impose the restaurant tax.

The seller may place a sign on the wall or print a notice on the bar bill stating that sales tax (and restaurant tax, in counties where it has been imposed) are included in the total price. Bar bills should be separate from bills for food or other items that must have sales tax added to the sales price.

### Additional Reference Material

- Utah Code §§59-12-601 through 59-12-603
- Administrative Rule R865-19S-94